

SENATE BILL NO. 97

INTRODUCED BY J. SHOCKLEY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE PARENTAL NOTICE OF ABORTION ACT AND
5 ENACTING THE PARENTAL NOTICE OF ABORTION ACT OF 2011; PROVIDING THAT THE PROVISIONS
6 OF THE ACT APPLY TO MINORS UNDER ~~16~~ 18 YEARS OF AGE; REVISING THE JUDICIAL BYPASS
7 PROVISIONS UNDER THE ACT; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING
8 SECTIONS 50-20-201, 50-20-202, 50-20-203, 50-20-204, 50-20-205, 50-20-208, 50-20-209, 50-20-211,
9 50-20-212, AND 50-20-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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13 NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Parental Notice of
14 Abortion Act of 2011".

15
16 NEW SECTION. **Section 2. Legislative purposes and findings.** (1) The legislature finds that:
17 (a) immature minors often lack the ability to make fully informed choices that take into account both
18 immediate and long-range consequences;
19 (b) the medical, emotional, and psychological consequences of abortion are sometimes serious and can
20 be lasting, particularly when the patient is immature;
21 (c) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an
22 abortion are not necessarily related;
23 (d) parents ordinarily possess information essential to a physician in the exercise of the physician's best
24 medical judgment concerning the minor;
25 (e) parents who are aware that their minor daughter has had an abortion may better ensure that the
26 daughter receives adequate medical care after the abortion; and
27 (f) parental consultation is usually desirable and in the best interests of the minor.
28 (2) The purpose of [sections 1 through 9] is to further the important and compelling state interests of:
29 (a) protecting minors against their own immaturity;
30 (b) fostering family unity and preserving the family as a viable social unit;

- 1 (c) protecting the constitutional rights of parents to rear children who are members of their household;
2 and
3 (d) reducing teenage pregnancy and unnecessary abortion.
4

5 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 9], unless the context requires
6 otherwise, the following definitions apply:

- 7 (1) "Actual notice" means the giving of notice directly in person or by telephone.
8 (2) "Coerce" means to restrain or dominate the choice of a minor female by force, threat of force, or
9 deprivation of food and shelter.
10 (3) "Emancipated minor" means a person under 18 years of age who is or has been married or who has
11 been granted an order of limited emancipation by a court as provided in 41-3-438.
12 (4) "Incompetent person" means a person who is an incapacitated person or a protected person who
13 has had a guardian appointed pursuant to Title 72, chapter 5.
14 (5) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical
15 judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion
16 of the woman's pregnancy to avert the woman's death or a condition for which a delay in treatment will create
17 serious risk of substantial and irreversible impairment of a major bodily function.
18 (6) "Minor" means a female under ~~16~~ 18 years of age who is not an emancipated minor.
19 (7) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian on a
20 child.
21 (8) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.
22 (9) "Sexual abuse" has the meaning given in 41-3-102.
23

24 **NEW SECTION. Section 4. Notice of parent required.** A physician may not perform an abortion upon
25 a minor or an incompetent person unless the physician has given at least 48 hours' actual notice to one parent
26 or to the legal guardian of the pregnant minor or incompetent person of the physician's intention to perform the
27 abortion. The actual notice may be given by a referring physician. The physician who performs the abortion must
28 receive the written statement of the referring physician certifying that the referring physician has given actual
29 notice. If actual notice is not possible after a reasonable effort, the physician or the physician's agent shall give
30 alternate notice as provided in [section 5].

1
2 **NEW SECTION. Section 5. Alternate notification.** In lieu of the actual notice required by [section 4],
3 notice may be made by certified mail addressed to the parent at the usual place of residence of the parent with
4 return receipt requested and delivery restricted to the addressee, which means a postal employee may deliver
5 the mail only to the authorized addressee. Time of delivery is considered to occur at noon on the next day on
6 which regular mail delivery takes place after mailing.

7
8 **NEW SECTION. Section 6. Exceptions.** Notice is not required under [section 4] or [section 5] if:
9 (1) the attending physician certifies in the patient's medical record that a medical emergency exists and
10 there is insufficient time to provide notice;
11 (2) notice is waived, in writing, by the person entitled to notice; or
12 (3) notice is waived under [section 8].

13
14 **NEW SECTION. Section 7. Coercion prohibited.** A parent, a guardian, or any other person may not
15 coerce a minor to have an abortion. If a minor is denied financial support by the minor's parents, guardian, or
16 custodian because of the minor's refusal to have an abortion, the minor must be considered an emancipated
17 minor for the purposes of eligibility for public assistance benefits. The public assistance benefits may not be used
18 to obtain an abortion.

19
20 **NEW SECTION. Section 8. Procedure for judicial waiver of notice -- rules.** (1) The requirements
21 and procedures under this section are available to minors and incompetent persons whether or not they are
22 residents of this state.

23 (2) The minor or incompetent person may petition the youth court for a waiver of the notice requirement
24 and may participate in the proceedings on the person's own behalf. The petition must include a statement that
25 the petitioner is pregnant and is not emancipated. The court may appoint a guardian ad litem for the petitioner.
26 A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the
27 petitioner of the right to assigned counsel and shall order the office of state public defender, provided for in
28 47-1-201, to assign counsel upon request.

29 (3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner. All
30 proceedings under this section must be sealed. The petitioner may file the petition using a pseudonym or using

1 the petitioner's initials. All documents related to the petition are confidential and are not available to the public.
2 The proceedings on the petition must be given preference over other pending matters to the extent necessary
3 to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions
4 of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of
5 the petitioner. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the
6 notice requirement is waived.

7 (4) If the court finds that the petitioner is competent to decide whether to have an abortion and that an
8 abortion is in the best interests of the petitioner, the court shall issue an order authorizing the minor to consent
9 to the performance or inducement of an abortion without the notification of a parent or guardian.

10 (5) The court shall issue an order authorizing the petitioner to consent to an abortion without the
11 notification of a parent or guardian if the court finds that:

12 (a) there is evidence of physical, sexual, or emotional abuse of the petitioner by one or both parents, a
13 guardian, or a custodian; or

14 (b) the notification of a parent or guardian is not in the best interests of the petitioner.

15 (6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the
16 petition.

17 (7) A court that conducts proceedings under this section shall issue written and specific findings of fact
18 and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings,
19 and conclusions be maintained.

20 (8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner if the
21 youth court denies a petition. An order authorizing an abortion without notice is not subject to appeal.

22 (9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of parental
23 notification or appeals a denial of a petition.

24

25 **NEW SECTION. Section 9. Criminal and civil penalties.** (1) A person convicted of performing an
26 abortion in violation of [section 4] or [section 5] shall be fined an amount not to exceed \$500 or be imprisoned in
27 the county jail for a term not to exceed 6 months, or both.

28 (2) Failure to provide the notice required under [section 4] or [section 5] is prima facie evidence in an
29 appropriate civil action for a violation of a professional obligation. The evidence does not apply to issues other
30 than failure to notify the parents or guardian. A civil action may be based on a claim that the failure to notify was

1 the result of a violation of the appropriate legal standard of care. Failure to provide notice is presumed to be
2 actual malice pursuant to the provisions of 27-1-221. [Sections 1 through 9] do not limit the common-law rights
3 of parents.

4 (3) A person who coerces a minor to have an abortion is guilty of a misdemeanor and upon conviction
5 shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year,
6 or both. On a second or subsequent conviction, the person shall be fined an amount not less than \$500 and not
7 more than \$50,000 and be imprisoned in the state prison for a term not less than 10 days and not more than 5
8 years, or both.

9 (4) A person not authorized to receive notice under [section 4] or [section 5] who signs a notice of waiver
10 as provided in [section 6(2)] is guilty of a misdemeanor.

11

12 **Section 10.** Section 41-1-405, MCA, is amended to read:

13 **"41-1-405. Emergencies and special situations.** (1) A health professional may render or attempt to
14 render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation,
15 to any injured person or any person regardless of age who is in need of immediate health care when, in good
16 faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical
17 or mental damage.

18 (2) A health professional may render nonemergency services to minors for conditions that will endanger
19 the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents,
20 or legal guardian.

21 (3) Consent may not be required of a minor who does not possess the mental capacity or who has a
22 physical disability that renders the minor incapable of giving consent and who has no known relatives or legal
23 guardians, if a physician determines that the health service should be given.

24 (4) Self-consent of minors does not apply to sterilization or abortion, except as provided in ~~Title 50,~~
25 ~~chapter 20, part 2~~ [sections 1 through 9]."

26

27 **Section 11.** Section 47-1-104, MCA, is amended to read:

28 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public**
29 **expense.** (1) There is a statewide public defender system, which must deliver public defender services in all
30 courts in this state. The system is supervised by the commission and administered by the office.

1 (2) The commission shall approve a strategic plan for service delivery and divide the state into not more
2 than 11 public defender regions. The commission may establish a regional office to provide public defender
3 services in each region, as provided in 47-1-215, establish a contracted services program to provide services in
4 the region, or utilize other service delivery methods as appropriate and consistent with the purposes described
5 in 47-1-102.

6 (3) ~~Beginning July 1, 2006, when~~ When a court orders the office to assign counsel, the office shall
7 immediately assign a public defender qualified to provide the required services. The commission shall establish
8 protocols to ensure that the office makes appropriate assignments in a timely manner.

9 (4) ~~Beginning July 1, 2006, a~~ A court may order the office to assign counsel under this chapter in the
10 following cases:

11 (a) in cases in which a person is entitled to assistance of counsel at public expense because of financial
12 inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

13 (i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of
14 incarceration, as provided in 46-8-101;

15 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in
16 40-6-119;

17 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any
18 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child
19 Welfare Act, as provided in 41-3-425;

20 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

21 (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

22 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

23 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally
24 disabled person to a residential facility, as provided in 53-20-112;

25 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in
26 53-21-116;

27 (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as
28 provided in 53-24-302; and

29 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

30 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless

1 of the person's financial ability to retain private counsel, as follows:

2 (i) as provided for in 41-3-425;

3 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in
4 need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution
5 Act, as provided in 41-5-1607;

6 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles,
7 as provided in 41-6-101;

8 (iv) for a minor who petitions for a waiver of parental notification requirements under the Parental Notice
9 of Abortion Act, as provided in ~~50-20-212~~ [section 8];

10 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled
11 person to a residential facility, as provided in 53-20-112;

12 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

13 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a
14 proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

15 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental
16 disorder of the ward, as provided in 72-5-322; and

17 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

18 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
19 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title
20 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

21 (b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender
22 services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a
23 proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the
24 statewide public defender system and does not result in a conflict of interest."

25
26 **NEW SECTION. Section 12. Repealer.** The following sections of the Montana Code Annotated are
27 repealed:

28 50-20-201. Short title.

29 50-20-202. Legislative purpose and findings.

30 50-20-203. Definitions.

- 1 50-20-204. Notice of parent required.
2 50-20-205. Alternate notification.
3 50-20-208. Exceptions.
4 50-20-209. Coercion prohibited.
5 50-20-211. Reports.
6 50-20-212. Procedure for judicial waiver of notice.
7 50-20-215. Criminal and civil penalties.

8

9 **NEW SECTION. Section 13. Codification instruction.** [Sections 1 through 9] are intended to be
10 codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections
11 1 through 9].

12

13 **NEW SECTION. Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are
14 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
15 the part remains in effect in all valid applications that are severable from the invalid applications.

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17 **NEW SECTION. Section 15. Effective date.** [This act] is effective on passage and approval.

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